

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of D.W.M., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SUSAN MOSSMAN,

Respondent-Appellant.

UNPUBLISHED

March 11, 2003

No. 242618

Oakland Circuit Court

Family Division

LC No. 01-656308-NA

Before: Meter, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

In this child protective proceeding, respondent mother appeals as of right from the trial court's order exercising jurisdiction over the minor child, following a jury trial. We affirm.

Respondent argues that there was insufficient evidence to support the jury's finding of jurisdiction. We disagree.

The trial court's jurisdiction in child protective proceedings is derived from statutes and the constitution. *In re Hatcher*, 443 Mich 426, 433; 505 NW2d 834 (1993); MCL 712A.2(b). Pursuant to MCL 712A.2(b)(1) and (2), a court has jurisdiction over a child whose parent, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for the child's health or morals, or when the parent's home is an unfit place for the child to live in due to the parent's neglect. Whether a statutory basis for jurisdiction exists is determined by a preponderance of the evidence. MCR 5.972(C)(1).

In this case, substantial evidence was presented that respondent repeatedly took the child from doctor to doctor, misrepresented prior diagnoses, exaggerated or fabricated symptoms, and subjected the child to unnecessary invasive medical procedures, laboratory tests, and medications. Despite negative results in most cases, she also convinced the child that he was gravely ill and would die if a gastric feeding tube was not surgically implanted in his stomach. His health improved significantly after he was removed from her care and fed a normal diet.

Viewing the record as a whole, there was sufficient evidence to enable the jury to find by a preponderance of the evidence that respondent's home was an unfit place for the child to live in because of respondent's neglect of his health and that, although she was able to do so, she failed or neglected to provide him with proper and necessary medical, surgical, and other care necessary for his health.

Respondent also argues that her right to due process was violated when the court allowed the prosecutor to amend the petition, immediately before trial, to allege that the child's medical condition had improved significantly after his removal from respondent's care. We disagree.

Constitutional questions are reviewed de novo. *In re Hawley*, 238 Mich App 509, 511; 606 NW2d 50 (1999). Due process requires that an individual be provided notice and an opportunity to be heard in a meaningful manner before being deprived of life, property, or liberty by an adjudication. *Mudge v Macomb Co*, 458 Mich 87, 101; 580 NW2d 845 (1998).

The Juvenile Code provides that "[a] petition or other court record may be amended at any stage of the proceedings as the ends of justice require." MCL 712A.11(6). Here, justice required that the amendment be allowed because, without it, the jury might be misled concerning whether the child was truly sick and suffering from the symptoms reported by respondent. Moreover, respondent was not unfairly prejudiced because she was on notice that the child's medical condition and health were at issue. Also, she was given an opportunity to cross-examine the new witnesses and present evidence of her own. Further, the testimony supporting the new allegation was brief and narrowly focused. Finally, given the substantial evidence against respondent, an exercise of jurisdiction would have been proper even without the new allegation and supporting evidence. Thus, we reject respondent's claim that her right to due process was violated.

Affirmed.

/s/ Patrick M. Meter
/s/ Kathleen Jansen
/s/ Michael J. Talbot